



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

Case No.: 470-2014-00334

██████████,  
Complainant,

v.

BARNABY'S RESTAURANT,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On November 24, 2013, ██████████ ("Complainant") filed a Complaint with the Commission against Barnaby's Restaurant ("Respondent") alleging discrimination on the basis of race in violation of ██████████ the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

There are two issues presented before the Commission. The first issue before the Commission is whether Complainant was subjected to a hostile work environment. In order to prevail, Complainant must show that (1) he was subjected to unwelcome comments or conduct of a racial nature; (2) the comments or behaviors were sufficiently severe or pervasive such that it would interfere with a reasonable employee would resign his employment; (3) he made it known that the behavior was unwelcome; and (4) Respondent failed to take corrective action.

There is sufficient evidence to believe that Complainant was subjected to racially derogatory comments and that the behavior was sufficiently severe such that a reasonable employee would resign his employment. Moreover, evidence shows that Complainant complained about the behavior to management who failed to take corrective action.



By way of background, Complainant was hired as a Busser in July or August 2013. Complainant asserts that during his tenure with Respondent, he never received an employee handbook or was informed of a method by which to report harassment. During the course of Complainant's tenure with Respondent, he alleges that Respondent's Night Manager, Mr. Jewitt (Caucasian) called him a "n\*\*\*er" on numerous occasions. Complainant further alleges that he alerted Respondent's General Manager, Mr. Lane (Caucasian), about the comments but he failed to investigate or address the matter. Ultimately, the racially derogatory comments continued and Complainant resigned his employment on or about October 19, 2013.

Despite given an opportunity to rebut Complainant's assertions, Respondent has failed to address Complainant's allegations. Moreover, no evidence has been provided or uncovered to show that Respondent maintained an employee handbook that addressed issues of harassment and Complainant denies receiving such a handbook or being aware of the means by which to report harassment. Further, Complainant alleges that Respondent failed to take action to remedy the hostile work environment. As such and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

The second issue is whether Complainant was subjected to an adverse employment action because of his race. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees of a different race were treated more favorably under similar circumstances.

It is evident that Complainant is a member of a protected class by virtue of his race, African-American, and that he was subjected to an adverse employment action when his hours were reduced. Moreover, there is sufficient evidence to show that Complainant was meeting Respondent's legitimate business expectations and that Respondent treated similarly-situated employees of another race more favorably under similar circumstances.

As previously mentioned, Respondent hired Complainant as a busser in the summer of 2013. Complainant asserts that he was scheduled to work Monday, Tuesday, and Thursday through Sunday from 5:00pm until closing. While Complainant asserts that Respondent accused him of selling pizzas out of the back door, Complainant denies the allegation and asserts that he was unable to cook pizzas and could not make extra ones for sale. Moreover, no evidence has been provided or uncovered to show that Complainant was disciplined as a result of his alleged misdeeds. Ultimately, Complainant alleges that his hours were reduced to Fridays and Saturdays while all other employees maintained their usual work schedule.

Again, Respondent failed to refute Complainant's allegations despite being given an opportunity to do so. Moreover, Complainant alleges that the General Manager's granddaughter (Caucasian) gave away pizzas for free without being disciplined. As such and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 30, 2014  
Date

Akia A. Haynes  
Akia A. Haynes, Esq.,  
Deputy Director  
Indiana Civil Rights Commission